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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,520	10/24/2003	Martin Diamond	799_001 CIP	9861
25191	7590	04/28/2004	EXAMINER	
BURR & BROWN PO BOX 7068 SYRACUSE, NY 13261-7068			LE, MARK T	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 04/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/692,520		DIAMOND, MARTIN	
	Examiner		Art Unit	
	Mark T. Le		3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/24/03</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The claim is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams (US 598,127) in view of Bove (US 6,368,690).

Williams discloses a cross-tie similar to that recited in the instant claim, including a plurality of wood pieces stacked and secured to one other by an adhesive to form a stacked structure, which is enclosed by a box formed by support members A. It is noted that the stacked structure of Williams is formed of wood pieces rather than tire treads. On the other hand, Bove uses tire treads to form a stacked structure for use as a cross-tie. In view of Bove, it would have been obvious to one skilled in the art to substitute tie treads for the wood pieces of Williams because in certain instances, tie treads may be more available than woods.

Regarding the instant claimed interposed membrane with an adhesive, it is noted that membranes coated with adhesives for use as bonding materials are well known (Official Notice is taken); therefore, it would have been obvious to one skilled in the art to use a well known bonding material in the form of membranes coated with adhesives for forming the stacked structure of Williams, as modified, so as to achieve expected advantages thereof, such as in terms of availability and bonding strength.

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Regarding the lower surface of the cross-tie being defined by one of tire treads, note that the structure of Williams, as modified, includes a box structure similar to that of Bove, wherein, when the box is turned upside-down, the open top of the box would become the lower surface, and the last layer of the tie treads would be readable as defining the lower surface of the tie. As to the coating being applied to the last layer of the stacked material, as suggested by Bove, it is noted that it would have been obvious to one skilled in the art to not applying any protective surface coating to the last layer of the stacked material of Williams, as modified, so as to minimize costs since the stacked material made of tire treads of Williams is deemed to be less likely to rot than wood.

Regarding the support members being connected by an adhesive, note that the support members A of Williams must be connected by some kind of mechanical fasteners and/or adhesives so as to form the box structure; and it would have been obvious to one skilled in the art to selectively use a strong commercially available wood glue as an adhesive for connecting the members of the box structure of Williams.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 703-308-3663. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le
Primary Examiner

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